

Before the  
**Federal Communications Commission**

Washington, D.C. 20554

In re Applications of  
VICTORY CHRISTIAN CENTER, INC.  
**INTERMART BROADCASTING OF  
NORTH CAROLINA, INC.**

TODD P. ROBINSON

SATURDAY COMMUNICATIONS  
LIMITED PARTNERSHIP

For Construction Permit for a New  
FM Station on Channel 224A in  
Harrisburg, North Carolina

TO: The Managing Director

MM Docket No. 93-302

File No. BPH-920326MA

File No. BPH-920326MB

File No. BPH-920327MI

File No. BPH-920327ML

RECEIVED

MAR - 2 1994

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**REQUEST FOR REFUND OF HEARING FEE**

Pursuant to Section 1.1111(c)(4) of the Commission's Rules, InterMart Broadcasting of North Carolina, Inc. (herein "InterMart"), by its attorneys, requests refund of its hearing fee of \$6,760.00.<sup>1</sup> In support whereof, the following is shown.

1. On January 6, 1994, InterMart, Victory Christian Center, Inc. ("VCC"), Saturday Communications Limited Partnership ("SCLP"), and Todd P. Robinson ("Robinson"), filed a Joint Request for Approval of Agreement. Attachment 2 hereto is a copy of Memorandum Opinion and Order, FCC 94M-104, released February 28, 1994, whereby Administrative Law Judge Richard L. Sippel, granted the Joint Request, which resulted in the dismissal of the applications of VCC, SCLP, and Robinson, and the grant of the

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<sup>1</sup> Attachment 1 hereto is a copy of InterMart's September 11, 1992, transmittal letter and FCC Form 155 which transmitted to the Commission InterMart's check in payment of the hearing fee. The fee was paid pursuant to FCC Report NA-161, released July 7, 1992.

No. of Copies rec'd \_\_\_\_\_  
List ABCDE

InterMart application. The Joint Request was filed by the notice of appearance deadline, and provided for the dismissal of all but one of the applicants and the single remaining applicant was immediately grantable. All outstanding matters relevant to InterMart were deleted.<sup>2</sup> InterMart's hearing fee can now be returned.

2. Under Section 1.1111(c)(4) of the Rules, InterMart is entitled to a refund of the hearing fee, since a settlement agreement has been approved and the InterMart application was immediately grantable. Please send the hearing fee check to the undersigned counsel.

Respectfully submitted,

**INTERMART BROADCASTING OF  
NORTH CAROLINA, INC.**

By. 

Gary S. Smithwick  
Its Attorney

**SMITHWICK & BELENDIUK, P.C.**  
1990 M Street, N.W.  
Suite 510  
Washington, DC 20036  
(202) 785-2800

March 2, 1994

lpd\harrisb\3-1.req

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<sup>2</sup> A contingent environmental impact issue against InterMart was deleted (See paragraph 5 of the Memorandum Opinion & Order). The hearing fee is returnable under such circumstances.

**ATTACHMENT 1**

RECEIVED SEP 14 1992  
RETURN COPY

LAW OFFICES  
SMITHWICK & BELENDIUK, P. C.

TELECOPIER  
(202) 785-2804

1990 M STREET, N.W.  
SUITE 510  
WASHINGTON, D.C. 20036

FCC/MELLON  
SEP 11 1992

TELEPHONE  
(202) 785-2800

September 11, 1992

Ms. Donna R. Searcy  
Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 20554

RE: InterMart Broadcasting of North Carolina, Inc.  
File No. BPH-920326MB  
Harrisburg, North Carolina

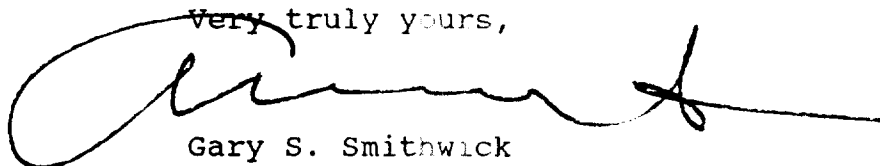
Dear Ms. Searcy:

Transmitted herewith, on behalf of InterMart Broadcasting of North Carolina, Inc., applicant for a new FM station at Harrisburg, North Carolina, is a check in the amount of \$6,760.00 in payment of the hearing fee (Fee Code: MWR).

Please stamp "received" the enclosed additional copy, and return it in the postage-paid self-addressed envelope provided.

If there are any questions with respect to this matter, please communicate with the undersigned.

Very truly yours,



Gary S. Smithwick  
Counsel for  
INTERMART BROADCASTING  
OF NORTH CAROLINA, INC.

GSS/pn.A0909  
Enc.

cc: Harrisburg Public File  
InterMart Broadcasting of North Carolina, Inc.

FEDERAL COMMUNICATIONS COMMISSION  
**FEE PROCESSING FORM**

FOR  
FCC  
USE  
ONLY

Please read instructions on back of this form before completing it. Section I MUST be completed. If you are applying for concurrent actions which require you to list more than one Fee Type Code, you must also complete Section II. This form must accompany all payments. Only one Fee Processing Form may be submitted per application or filing. Please type or print legibly. All required blocks must be completed or application/filing will be returned without action.

**SECTION I**

APPLICANT NAME (Last, first, middle initial)

InterMart Broadcasting of North Carolina, Inc.

MAILING ADDRESS (Line 1) (Maximum 85 characters - refer to Instruction (2) on reverse of form)

c/o Smithwick & Belendiuk, P.C.

MAILING ADDRESS (Line 2) (if required) (Maximum 85 characters)

1990 M Street, N.W., Suite 510

CITY

Washington,

STATE OR COUNTRY (if foreign address)

D.C.

ZIP CODE

20036

CALL SIGN

OTHER FCC IDENTIFIER

BPH-920326MB

Enter in Column (A) the correct Fee Type Code for the service you are applying for. Fee Type Codes may be found in FCC Fee Filing Guides. Enter in Column (B) the Fee Multiple, if applicable. Enter in Column (C) the result obtained from multiplying the value of the Fee Type Code in Column (A) by the number entered in Column (B), if any.

(A)	(B)	(C)	
FEE TYPE CODE	FEE MULTIPLE (if required)	FEE DUE FOR FEE TYPE CODE IN COLUMN (A)	FOR FCC USE ONLY
(1) M W R		\$ 6,760.00	

**SECTION II**

— To be used only when you are requesting concurrent actions which result in a requirement to list more than one Fee Type Code.

(A)	(B)	(C)	
FEE TYPE CODE	FEE MULTIPLE (if required)	FEE DUE FOR FEE TYPE CODE IN COLUMN (A)	FOR FCC USE ONLY
(2)		\$	
(3)		\$	
(4)		\$	
(5)		\$	
ADD ALL AMOUNTS SHOWN IN COLUMN C, LINES (1) THROUGH (5), AND ENTER THE TOTAL HERE. THIS AMOUNT SHOULD EQUAL YOUR ENCLOSED REMITTANCE.			
TOTAL AMOUNT REMITTED WITH THIS APPLICATION OR FILING			FOR FCC USE ONLY
\$ 6,760.00			

**ATTACHMENT 2**

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

FCC 94M-104

In re Applications of	)	MM DOCKET NO. 93-302
VICTORY CHRISTIAN CENTER, INC.	)	File No. BPH-920326MA
INTERMART BROADCASTING OF NORTH CAROLINA, INC.	)	File No. BPH-920326MB
TODD P. ROBINSON	)	File No. BPH-920327MI
SATURDAY COMMUNICATIONS LIMITED PARTNERSHIP	)	File No. BPH-920327ML
For Construction Permit for a New FM Station on Channel 224A in Harrisburg, North Carolina	)	

MEMORANDUM OPINION AND ORDER

Issued: February 25, 1994

Released: February 28, 1994

Background

1. This is a ruling on a Joint Request For Approval Of Agreement that was filed on January 6, 1994, by Victory Christian Center ("VCC"), Intermart Broadcasting of North Carolina, Inc. ("Intermart"), Todd P. Robinson ("Robinson"), and Saturday Communications Limited Partnership ("SCLP"). Related pleadings are a Legal Amendment filed on January 6, 1994, by Saturday; a Petition For Leave To Amend And Amendment filed on January 6, 1994, by Intermart; a Motion To Delete Issue filed on January 6, 1994, by Intermart; a Proof Of Publication filed on January 24, 1994, by Intermart; a Supplement To Joint Request For Approval Of Agreement filed on January 26, 1994, by VCC reflecting expenses; and a Shareholders' Agreement filed on February 24, 1994. The Mass Media Bureau has filed its Consolidated Comments On Joint Request For Approval Of Agreement, Petition For Leave To Amend And Amendment, And Motion To Delete Issue and the Audio Services Division submitted a letter to the Presiding Judge requesting the removal of the contingent environmental issue.

Facts

Settlement Payments

2. The Agreement contemplates the dismissals of the applications of VCC and SCLP in exchange for payments not to exceed \$15,000 and \$20,000 to VCC and SCLP respectively. The Agreement further contemplates the grant of Intermart's application, as amended. Also Robinson is to receive 50% of the voting stock of Intermart

3. The Commission's rules permit recovery in a settlement of only the actual legitimate and prudent expenses incurred by the dismissing party. 47 C.F.R. §73.3525 (a)(3). VCC's Supplement reflects legal fees, engineering fees, and filing and hearing fees for total expenditures of \$18,816. The Joint Request reflects SCLP's legal fees, engineering fees, a site selection fee, filing and hearing fees, and miscellaneous shipment costs in the total amount of \$24,926. Both parties will seek to recover a refund of their respective hearing fees and both parties commit to refund to Intermart the amount of those fees if they are recovered. Principals of VCC and SCLP have submitted declarations with attached invoices which are accountings of expenses that conform with Commission standards. See Amendment Of Section 73.3525, 6 F.C.C. Rcd 85, 91 n. 54 (1990) (brief description of the nature of the specific activity and connection with proceeding). Also, the required declarations of no consideration have been filed by all parties.

#### The Merger

4. The Agreement provides that Intermart's principal, James E. Martin, Jr. ("Martin") will combine with Robinson as equal shareholders with each holding 50% of the outstanding voting shares of Intermart. Pursuant to the Shareholders' Agreement, Robinson and Martin become equal owners of Intermart. Robinson's application will be dismissed. There will be no compensation paid in connection with the creation of the joint interests of Martin and Robinson in Intermart and therefore there would be no question of a payment made incident to a merger that would circumvent the monetary limitations on non-merger settlements. See Amendment of Section 73.3525 of the Commission's Rules Regarding Settlement Agreements for Construction Permits, 6 F.C.C. Rcd 2901, 2902 (1991). Also, the combining of the interests of the two applicants will bring additional capital to the enterprise which should result in providing more effective broadcast services to the Harrisburg community.

#### Environmental Issue

5. Intermart seeks to cure an environmental issue by an Amendment and a Motion To Delete Issue. See Hearing Designation Order DA 93-1476, released December 17, 1993 ("HDO") at Para. 5 (Intermart to file an EA with the Chief, Audio Services Division for assessment under §1.1308). The Bureau's Comment of January 28, 1994, stated that the Bureau will advise the Presiding Judge of the efficacy of Intermart's environmental assessment upon completion of its review. On February 22, 1994, the Assistant Chief, Audio Services Division, advised the Presiding Judge in writing:

Upon examination of the enclosed pleading [Intermart Amendment] the Bureau finds that the information satisfies the requirement of 47 C.F.R. § 1.1311.

Accordingly, the Bureau requests that the contingent environmental issue specified as to this applicant be eliminated from the Hearing Designation Order.



Based on the unqualified statement of the Bureau quoted above and the representation of Intermart in its Motion To Delete Issue and in its Petition For Leave To Amend And Amendment, the environmental issue as to Intermart is resolved in favor of Intermart and it will be deleted.

#### Settlement

6. The statutory standard to be applied in accepting or rejecting a settlement proposal provides:

The Commission shall approve the agreement only if it determines that (a) the agreement is consistent with the public interest, convenience or necessity, and (b) no party to the agreement filed its application for the purpose of reaching or carrying out such agreement.

Communications Act of 1934, as amended, Section 311(c)(3). See Oak Television of Everett, Inc., et al., 93 F.C.C. 2d 926 (Review Bd. 1983).

7. In this case, the Joint Request was filed in accordance with Section 73.3525. The parties have represented under penalty of perjury that their applications were not filed for the purpose of reaching or carrying out a settlement agreement and that the agreement is in the public interest. It is determined that the parties have complied with 47 C.F.R. §§73.3525(a)(1) and (a)(2) of the Commission's rules. A review of the line-item expenses of VCC and SCLP are found to be legitimate and prudent in accordance with the Commission's standards. See 47 C.F.R. §73.3525 a)(3). And with the deletion of the environmental issue, the Bureau has no objection to approving the settlement.

8. There has been compliance with the local publication requirement of the Commission's rules. 47 C.F.R. §73.3594(g). The parties also have paid the required hearing fees. 47 C.F.R. §1.221(g). There are no disqualifying issues to resolve. Commission resources will be conserved by the termination of this case prior to hearing. In addition, the public interest will be served by approval of this settlement which will reduce substantially the costs of litigation to the parties and to the Commission. Accordingly, it is appropriate that the proposed settlement be accepted.

#### Ruling

IT IS ORDERED that the Joint Request For Approval Of Agreement that was filed on January 6, 1994, by Victory Christian Center, Intermart Broadcasting of North Carolina, Inc., Todd P. Robinson and Saturday Communications Limited Partnership, IS GRANTED and the Settlement Agreement IS ACCEPTED.

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<sup>1</sup> There is also an environmental issue pending with respect to the proposal of SCLP. See HDO at Para.5. Since SCLP will receive a payment in return for its dismissal, that environmental issue becomes moot. SCLP also filed a Legal Amendment which addresses EEO and financial matters raised in the HDO. In view of the settlement, those issues also are moot and need not be addressed.

IT IS FURTHER ORDERED that the Petition For Leave To Amend And Amendment filed by Intermart on January 6, 1994, IS GRANTED and the Amendment IS ACCEPTED.

IT IS FURTHER ORDERED that the Motion to Delete Issue filed by Intermart on January 6, 1994, IS GRANTED and the environmental issue IS DELETED.

IT IS FURTHER ORDERED that the application of Victory Christian Center (File No. BPH-920326MA) IS DISMISSED with prejudice.

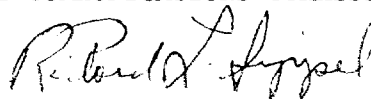
IT IS FURTHER ORDERED that the application of Todd P. Robinson (File No. BPH-920327MI) IS DISMISSED with prejudice.

IT IS FURTHER ORDERED that the application of Saturday Communications Limited Partnership (File No. BPH-92032ML) IS DISMISSED with prejudice.

IT IS FURTHER ORDERED that the application of Intermart Broadcasting of North Carolina, Inc., as amended, (File No BPH-920326MA) to construct a new FM Station on Channel 224A in Harrisburg, North Carolina IS GRANTED.

IT IS FURTHER ORDERED that this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION



Richard L. Sippel  
Administrative Law Judge